

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 212

January 20, 1958

AMORTIZATION: AMOUNTS PREVIOUSLY EXPENSED: YEARS BARRED BY STATUTE OF LIMITATIONS

Syllabus:

Amounts previously expensed, which should have been carried as a capital expenditure, may not later be amortized for years barred by the statute of limitations.

Taxpayer pays finders fees to third parties for their introduction of acceptable applicants for mortgage loans. For franchise tax purposes taxpayer had previously expensed the entire amount of such fees and the deductions have been allowed. Beginning in 1952 for federal tax purposes and book purposes, taxpayer amortized the amounts paid over the average life of the loans since the fees were held to constitute part of the acquisition cost of the loans. Advice is requested whether taxpayer may now amortize fees expensed in prior years now barred by the statute of limitations.

The rule of Comm. v C. J. Dwyer, 203 F2d 522, and other like cases are not applicable in this case as they were concerned with changes in accounting methods. Rev. Rul 57-400 is however, directly in point with the instant problem. This ruling provides, "that a taxpayer who has deducted commissions in full for a taxpayer year which has become barred from adjustment of tax liability by the expiration of the statute of limitations may not, for a subsequent year or years, again deduct the same commissions to the extent of any pro rata portion relating to such year or years".

This ruling is consistent with the principle in Regulation 24121(a)(1) which provides, "Double deductions are not permitted". Accordingly for state purposes Rev. Rul. 57-400 will be applied to prevent taxpayer from amortizing "finders fees" which were expensed in prior years.